

SENATE BILL REPORT

ESHB 2866

As Reported By Senate Committee On:
Natural Resources, Parks & Shorelines, February 28, 2002

Title: An act relating to hydraulic permits.

Brief Description: Limiting overlapping jurisdiction regarding the permitting of storm water projects.

Sponsors: House Committee on Natural Resources (originally sponsored by Representatives Doumit, Sump, Reardon, Schoesler, Linville, Kessler, Morris, Mulliken, Hatfield, Pearson, Grant, Armstrong and McMorris).

Brief History:

Committee Activity: Natural Resources, Parks & Shorelines: 2/27/02, 2/28/02 [DPA, DNPA].

SENATE COMMITTEE ON NATURAL RESOURCES, PARKS & SHORELINES

Majority Report: Do pass as amended.

Signed by Senators Hargrove, McDonald, Morton, Oke, Snyder and Stevens.

Minority Report: Do not pass as amended.

Signed by Senators Jacobsen, Chair; Poulsen, Vice Chair; and Spanel.

Staff: Ross Antipa (786-7413)

Background: A person must obtain hydraulic project approval for any project or work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state before beginning the construction or work. Hydraulic permits are issued to ensure the proper protection of fish life and are issued by the Department of Fish and Wildlife (DFW).

Hydraulic project approvals cannot be unreasonably withheld. Some concerns have been expressed that the conditions being attached to hydraulic permits are not in proportion to the impact of the proposed project. The imposition of impact fees by local governments requires that the fees must reasonably relate to the increased service demands caused by the development activity. The local ordinance imposing the fee must develop a method for calculating the amount of impact fees based upon the proportionate share of the cost of public facility improvements required for each type of development activity. There is no similar type of guidelines used for attaching conditions to hydraulic permits.

Additional concerns have been raised by applicants seeking approval for storm water projects that there are inconsistent directions being given by the Department of Ecology (DOE) and DFW.

Marinas in existence on June 6, 1996, or that have received a hydraulic project approval for its initial construction, may obtain upon request a renewable five-year hydraulic project approval for regular maintenance activities of the marina. This type of renewable five-year approval for regular maintenance is not available for marine terminals.

The Hydraulics Appeals Board consists of three members. One member is the director of the Department of Ecology or the director's designee, one member is the director of the Department of Agriculture or the director's designee, and the remaining member is the director of DFW or the director's designee. The board is responsible for hearing those hydraulic appeals related to diversions of water for agricultural irrigation or stock watering, streambank stabilization to protect farm and agricultural land, and proposals pertaining to off-site mitigation. There are no representatives of local government on this board.

Summary of Amended Bill: Hydraulic projects may not be unreasonably conditioned. Conditions imposed upon obtaining a hydraulic project approval must reasonably relate to the project. DFW may not impose conditions that attempt to optimize fish life that are out of proportion to the impact of the proposed project.

Hydraulic permits must contain provisions that allow for minor modifications to the plans and specifications without requiring a permit to be reissued.

A process is established to address overlapping jurisdiction between DOE and DFW regarding storm water projects. DOE and local governments operating under the water pollution control laws are recognized as having the primary responsibility for the regulation of storm water projects. Once DOE or a local government has approved a storm water project that is consistent with the storm water manual adopted by DOE in 2001, or its equivalent, a hydraulic permit is only required for the actual construction of any storm water outfall or associated structures. DFW may not deny or condition hydraulic permits under these circumstances based upon water quality or quantity impacts arising from storm water discharges for which the structure is being installed.

In other locations, DFW may issue hydraulic permits pertaining to storm water projects, and the permits may contain provisions that protect fish life from adverse effects resulting from the direct hydraulic impacts of the discharge. Before issuing a hydraulic permit with conditions under these circumstances, DFW must make a finding that the discharge from the outfall will cause harmful effects to fish, send the findings to the applicant and the city or county in which the project is being proposed, and allow the applicant an opportunity to use local ordinances or other mechanisms to avoid adverse effects resulting from the direct hydraulic discharge. Once this process is followed, DFW may issue a hydraulic permit that prescribes the discharge rates from an outfall structure that will prevent adverse effects to the bed or flow of the waterway. DFW may recommend, but not specify, the measures needed to meet these discharge rates. DFW may not require changes to the project design above the mean higher high water mark of marine waters or the ordinary high water mark of fresh waters of the state. Nothing is intended to alter any authority DFW may have to regulate other types of projects under the hydraulics code.

Marine terminals in existence on June 6, 1996, or marine terminals that have received a hydraulic project approval for their initial construction, may obtain upon request a renewable five-year hydraulic project approval for regular maintenance activities of the marine terminal.

The membership of the Hydraulics Appeals Board is increased by three members representing local governments. One of these members represents cities, one member represents counties, and one member represents port districts. The local government representatives are appointed by and serve "at the pleasure" of their respective state associations.

Amended Bill Compared to Substitute Bill: Changes are made to ensure that hydraulic permits may be reasonably conditioned. Reference is made to the 2001 stormwater manual approved by the Department of Ecology. The 45-day requirement for hydraulic permit approval is suspended if the applicant desires to utilize local ordinances or other mechanisms to avoid adverse effects of hydraulic discharges.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The hydraulic permit program should be clearly delineated from the Department of Ecology stormwater program. Hydraulic permits should require conditions that are reasonably related to the projects being permitted. The Hydraulic Appeals Board should be expanded by three members.

Testimony Against: Proper protection of fish life requires the strong regulatory structure that is now in place; the bill is not needed.

Testified: Eric Johnson, WA Public Ports Assn. (pro); Greg Hueckel, WDFW (pro); Bruce Wishart, People for Puget Sound (con); Bob Jensen, Environmental Hearings Office (con section 6) Jerry Alb, WSDOT (pro); Kristen Sawin, AWB (pro).